

1 **WO**

NOT FOR PUBLICATION

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Deering Therapy Services Limited,

No. CV-17-08171-PCT-JJT

10 Plaintiff,

ORDER

11 v.

12 Christopher Reno, *et al.*,

13 Defendants.
14

15 At issue is Plaintiff's Amended Complaint (Doc. 13) and Notice to Deem
16 Defendants' Motion to Dismiss as Moot (Doc. 14).

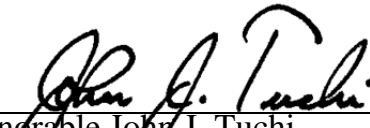
17 A party may amend a complaint once as a matter of course within 21 days after
18 serving it, or within 21 days of service of, among others, a Rule 12(b)(6) motion. Fed. R.
19 Civ. P. 15(a). Plaintiff filed its Amended Complaint fourteen days after Defendants'
20 Motion to Dismiss. Thus, Plaintiff was well within its right to do so. Ordinarily, the
21 "amended complaint supersedes the original." *Ramirez v. Cty. of San Bernardino*, 806
22 F.3d 1002, 1008 (9th Cir. 2015). Nevertheless, "defendants should not be required to file
23 a new motion to dismiss simply because an amended pleading was introduced while their
24 motion was pending," particularly "[i]f some of the defects raised in the original motion
25 remain." 6 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1476
26 (3d ed.).

27 Plaintiff's Amended Complaint includes 21 lines of new allegations in addition to
28 minor edits throughout the document to reflect these additions. (*See* Doc. 12-1.) Plaintiff,

1 however, did not remove any allegation nor did Plaintiff add any new count. At first
2 glance, it is not clear that these amendments adequately address the concerns raised in the
3 Motion to Dismiss, and Plaintiff's "Notice" of mootness provides no explanation to guide
4 this Court. Moreover, as required by this Court, the parties held a meet-and-confer prior
5 to the filing of the Motion to Dismiss. (See Doc 10-1; Doc. 7, Order.) In this meeting, the
6 parties were to determine whether any amendment to the Complaint would be futile for
7 purposes of a Motion to Dismiss. (See Doc. 7, Order.) Because the parties "were unable
8 to agree that the pleading is curable by a permissible amendment," (Doc. 12-1), the Court
9 deems the Motion to Dismiss applicable with equal force to the Amended Complaint.
10 Therefore, although the Court is most appreciative of the opinion stated in Plaintiff's
11 "Notice," the Court finds that Defendants' Motion to Dismiss is not moot. Plaintiff must
12 file a responsive brief within seven days of this Order.

13 **IT IS THEREFORE ORDERED** that Plaintiff shall file a Response to
14 Defendants' Motion to Dismiss (Doc. 10) within seven days of issuance of this Order.

15 Dated this 9th day of November, 2017.

16
17 
18 _____
19 Honorable John J. Tuchi
20 United States District Judge
21
22
23
24
25
26
27
28